IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 32

JAMES R. HOFFA, *Petitioner*

v.

UNITED STATES

No. 33

THOMAS EWING PARKS, *Petitioner*

v.

UNITED STATES

No. 34

LARRY CAMPBELL, *Petitioner*

v.

UNITED STATES

No. 35

EWING KING, *Petitioner*

v.

UNITED STATES

REPLY OF PETITIONERS TO MEMORANDUM FOR THE UNITED STATES IN OPPOSITION TO PETITIONERS' "MOTION FOR RELIEF"

The limited nature of the Solicitor General's Memorandum reinforces our contention that a new trial should be ordered. The Solicitor General does not

claim any personal knowledge of whether petitioners' convictions were invalid because of illegal wiretapping and eavesdropping. Yet his memorandum is not supported by the oath of anyone with any personal knowledge of the facts. Indeed, it is not supported by anyone's oath.

The allegations of our motion are factual and specific as to dates, places, and Government personnel involved. And each specific allegation of fact is supported by the affidavit of one or more citizens who surely risk perjury if their affidavits were false. But, in response, no specific fact, alleged by us and supported by oath, is denied by the Government—not even by way of a representation by one with no personal knowledge of the facts.

Instead, the Government first suggests that our affidavits should be viewed "with skepticism" (Memorandum for the U.S., p. 4). Statements of fact, sworn to under penalty of perjury, are not rebuttable by considerations of "skepticism." If they were so rebuttable, we would suggest another and major consideration. It is most difficult to believe, and for skeptics practically impossible to believe, that the Government's jury-tampering prosecution of Petitioner Hoffa, a chief Government target, was clean, although at the very time of that prosecution the Government, by its own admissions,[1] extensively wiretapped and eavesdropped in criminal cases of comparatively minor importance to it. However, we do not regard considerations of "skepticism" as being relevant to the con-

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[1] See the Government's memoranda in *Black* v. *United States*, 87 S. Ct. 190, 17 L. Ed. 2d 26, and *Schipani* v. *United States*, 17 L. Ed. 2d 428.

troverting of sworn testimony. Hence, we confine to a footnote [2] our reply to the Solicitor General's "reasons" for "skepticism."

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[2] By way of a reason for "skepticism," the Government's Memorandum (pp. 3-4) relies on petitioners' present "Motion for Relief" as being the "fourth collateral attack" on their convictions. That proves nothing since invalid convictions necessarily invite attack. Two of these attacks concerned the bias or misconduct of jury, Government, and trial judge. The second of the attacks (one learns as one keeps digging) is supported, as the Government fails to mention, by the affidavits of perfectly respectable fellow employees of the jurors concerned. The trial judge refused to disqualify himself, and found in favor of himself, and against petitioners on the basis of Government affidavits which conflicted with ours on jury and Government misconduct, but failed to deny jury and trial judge bias. Without any delay by petitioners of the appellate process, the validity of the second attack, including the question of the propriety of the trial judge's sitting on his own case, as it were, and denying hearing, is now before the Court of Appeals for decision. So, too, is the validity of petitioners' third attack. The Government's Memorandum does not state the nature of the third attack, although it is the third attack which leaves one skeptical as to the Government's general denials. In that attack, petitioners charged intrusion by a Government agent on petitioners' use of counsel for their defense. In response, the Government, *as here,* generally denied the charge and offered no one's oath or any supporting affidavits. Thereafter, petitioners were able to show the intrusion by the Government's own notes and reports. Hearing on the question of intrusion was nevertheless denied, with the Government arguing that its intrusion, previously denied, was legal since it was only for the purpose of discovering illegal activities.

Public spirited citizens and friends of Petitioner Hoffa have certainly offered rewards for information pertaining to the invalidity of petitioners' convictions. The Government has offered no such rewards, although those officials of Government who did not participate in illegal activities should be as interested as we are in discovering the truth. In any event, rewards are just as appropriate for information in support of acquittal as they are for information in support of conviction.

To his "reasons" for "skepticism," the Solicitor General adds only three representations by way of general denials. Each of the three representations is qualified and limited. The Court is "assured" that petitioners' attack on the integrity of this prosecution is "so far as we can determine" without "basis in fact" (Memo. for U.S., p. 7). Petitioners' affidavits, themselves, provide a sufficient "basis in fact." The Government further informs the Court that, apart from petitioners' affidavits, its own inquiry has produced no information lending any support "to a claim that *electronic* eavesdropping or wiretapping *affected* petitioners' convictions" (Mem. for the U.S., p. 8) (italics supplied). The very wording of that "general denial" suggests two important things which are not denied, but implicitly admitted: (1) Government use of *non*-electronic eavesdropping which did "affect" petitioners' convictions; and (2) Government use, in relation to petitioners and their counsel, of both electronic eavesdropping and wiretapping, which in the judgment of the prosecuting Department did not "affect" petitioners' convictions. Finally, the Government represents that its inquiries made subsequent to receipt of petitioners' affidavits "establish" the lack of any foundation in fact for "the *relevant* allegations" (italics supplied) of those affidavits "which charge or suggest that there was electronic eavesdropping or wiretapping by agents of the Federal Government (or at their request) on petitioners' premises or telephones, on the premises or telephones of their attorneys, or on the premises occupied or the telephones used by the jury." Here again the "general denial" is limited. There is no denial of *non*-electronic eavesdropping, or of electronic eavesdropping on telephones or prem-

ises of others which were used by petitioners and their counsel.[3]

In short, petitioners' affidavits stand uncontroverted by any proper, effective, and adequate refutation by the Government. Those affidavits make a showing of unconstitutional convictions as good as, or better than, the like showing made in *Black* v. *United States, supra,* and *Schipani* v. *United States, supra. Black* and *Schipani* require reversal for new trial here. There is no difference in substance between those cases and this one.[4] We recognize, of course, that in those cases,

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[3] In hearings held while the jury deliberated, the Government admitted an extensive surveillance of associates of the petitioners, Charles O'Brien, George Hicks, William Test and Bernard Spindel (see Pet. for Cert., pp. 28-32). Spindel did not arrive in Chattanooga until the trial had proceeded for two weeks. The Solicitor General in no wise denies, either specifically or generally, the placing of telephone taps or "bugs" on the telephones or in the rooms of these associates or others in the defense camp at the Patten Hotel; nor that conversations of petitioners or their counsel were intercepted there which he does not regard as having "affected" petitioners' convictions. Also, the Solicitor General does not deny, even generally, that the Federal Government received logs of conversations of Hoffa or his attorneys from local police of taps not placed at the request of Federal agents.

[4] In *United States* v. *Shotwell,* 355 U.S. 233, this Court, on Government affidavits of fraud, denied by the respondents, vacated Court of Appeals judgments reversing respondents' convictions, and remanded for hearing in the District Court on the Government's charges. *Shotwell* was not concerned with constitutional issues of invalidity; and *Schipani* and *Black* are therefore the direct precedents for this case. But even under *Shotwell,* petitioners are entitled, at a minimum, to vacating of the judgments here and remand to the District Court for hearing. The Government has not explicitly suggested, and could not respectably suggest, that the administration of criminal justice applicable here is a one-way street to be travelled only by the Government. Yet, the Government's ignoring of *Black, Schipani* and *Shotwell* as precedent here amounts to just such an argument in contravention of our ideals of impartial justice.

the Solicitor General, himself, raised the issue of invalid conviction. But that should make no difference; for the Solicitor General as counsel for the United States stands no better and no more privileged in our courts than counsel for any party litigant.

Further, in this case, the Solicitor General may not be fully advised as to all pertinent matters outside of the Department of Justice's records. Most of the people who conducted the investigation and prosecution of this case, particularly Walter Sheridan and his special group of investigators, are no longer with the Government. Sheridan, who was the Attorney General's special assistant and not a regular official of the FBI, was not bound to make written reports for the Department's files as is the practice of regularly constituted investigative agencies of the Government. We assume the Solicitor General is relying on the word of individuals (particularly Walter Sheridan, who was the principal, if not the lone, actor in most of the incidents related by the affiants in petitioners' Motion) in asserting that his inquiry has established that certain "relevant" allegations made in our Motion are without foundation in fact. This representation, even if the Government were to have and had filed Sheridan's sworn denial, would fall far short of the probity of the several and particularized affidavits filed by petitioners.

At a new trial, the District Court can resolve such issues of fact as may then be raised (no such issues have been raised as yet) by such affidavits as the Government then presents.

The Government's argument against a new trial ignores the Court's decisions in *Black* and *Schipani,* and largely misses the point. We do not say that this Court, or any appellate Court, should hear contested issues of fact. The District Court, we readily agree, sits for that purpose. What we do say is that, as yet, there are no contested issues of fact, and that such contests as may arise should be determined by the District Court upon new trial, as held in *Black* and *Schipani.*

Finally, it ill befits the Government of a civilized people to insist that its citizens start serving prison terms under judgments which are subject to immediate, present and substantial attack for constitutional invalidity. Should such judgments prove constitutionally invalid, as is sufficiently indicated by the affidavits in this case, the Government, this Court, all other courts, and everyone else would be powerless to remedy the hurt to petitioners from invalid prison sentences already served. Unless and until the Government finds a remedy for days wrongfully spent in prison under sentences wrongfully obtained under our Constitution and laws, it should, at a minimum, refrain from so casually disposing of the liberty of citizens of the United States. This Court should vacate its judgments herein and remand the causes to the District Court for a new trial. Certainly, at the very minimum, this Court should order a hearing and findings by the District Court on the allegations of the Motion, and this Court should continue its jurisdiction over this cause by withholding its decision on the Petition for a Rehearing until after such hearings are conducted

and such findings are made by the District Court and reported to this Court.

Respectfully submitted,

MORRIS A. SHENKER

DANIEL B. MAHER

JOSEPH A. FANELLI
Counsel for Petitioner Hoffa

JACQUES M. SCHIFFER
Counsel for Petitioner Parks

CECIL D. BRANSTETTER
Counsel for Petitioner Campbell

P. D. MAKTOS

HAROLD E. BROWN
Counsel for Petitioner King

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